

The complaint

Mr B complained that Advancis Limited trading as Buddy Loans lent to him irresponsibly.

What happened

Mr B took out a loan with Buddy Loans as follows:

Loan	Date	Amount	Term	Monthly repayment
1	06/06/17	£4,000	48 months	£171.10

Mr B brought his complaint to us when he wasn't able to resolve it with Buddy Loans.

In summary, Mr B didn't think that Buddy Loans had lent to him responsibly. He said the loan was unaffordable and the right affordability checks were not properly done leading to financial problems.

One of our adjudicators looked at what had happened.

Our adjudicator thought that the information Buddy Loans gathered about Mr B's credit history, which included some negative information on his credit report, should've prompted Buddy Loans to do more to check his financial situation before agreeing this loan— and had it done so, it should've found out that it was unlikely Mr B would be able to sustainably repay this loan.

Our adjudicator set out directions indicating what Buddy Loans needed to do to put things right.

Buddy Loans disagreed with our adjudicator's view. In brief summary, it mainly said that it carried out a credit assessment that went beyond the regulator's expectations and the expectations of the Financial Ombudsman Service seemed to be different to the regulator's expectations.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

"There are some general principles I will keep in mind when deciding whether to uphold Mr B's complaint.

Before agreeing to lend, lenders must work out if a borrower can afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look affordable on a strict pounds and pence calculation. A lender must take reasonable steps to satisfy itself that the borrower can sustainably repay the loan – in other words, without needing to borrow elsewhere.

I agree with Buddy Loans when it says that the rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. For example, when thinking about what a borrower has left to spend on a new loan after paying other expenses, as well as taking into account the loan amount, the cost of the repayments and how long the loan is for, a proportionate check might mean a lender should also find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done.

If proportionate checks were done and a loan looks affordable, a lender still needs to think about whether there's any other reason why it would be irresponsible or unfair to lend. For example, if the lender should've realised that the loan was likely to lead to more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

I've kept all these things in mind and I've thought carefully about the information Buddy Loans relied on when it decided to lend to Mr B.

Buddy Loans asked Mr B about his income and expenses and carried out credit checks - and it sent this information to us. So I've been able to see information that Buddy Loans relied on when it agreed to provide this loan to Mr B.

Buddy Loans recorded Mr B's income as £2,000 per month and used an online electronic income checker to verify what Mr B had said about his monthly pay.

Relying on this figure for his net monthly income and taking into account what Mr B had said about his monthly expenditure, including his spending on other credit, Buddy Loans worked out this left him with around £747 each month. It had allowed a 'contingency' of £100 to cover any small fluctuations in his monthly income or spending and calculated that Mr B should've been comfortably able to afford the monthly repayment of £171.10 on this loan.

But I think that Buddy Loans could see from its credit check that Mr B was making extensive use of credit. He had an amount of around £23,718 already outstanding – which I think was a substantial credit balance having regard to Mr B's declared income of £2000. Buddy Loans credit check showed he was actually paying approximately £1096 towards other creditors – including other providers of high cost credit.

And Buddy Loans had noted that there were two active defaults showing on his record – these were defaulted credit cards from 2011 which Mr B was still paying. Also, within the previous three months, he'd made a late payment on a credit card and taken out at least three new loans, borrowing in excess of £5000 during this period – which was approximately a quarter of his outstanding balance owing to creditors when he applied to Buddy loans for this loan.

So, although the loan might've *looked* affordable to Buddy Loans, I think all this information appeared to be at odds with what Buddy Loans might've reasonably expected to see, given the disposable income figure it had worked out for Mr B.

To my mind, the information Buddy Loans gathered included clear warning signs that Mr B was struggling to manage his finances – defaults dating back 6 years were still being paid and he had recently missed the payment date on one of his many credit cards. He was

already borrowing from at least four other lenders of expensive high cost loans and he had a payday loan as well.

I think it would have been reasonable for Buddy Loans to conclude that, despite the disposable income calculation that it arrived at, Mr B was struggling to manage his finances. And it couldn't reasonably say, based on the information it had seen, that it was satisfied he would be able to repay this loan in a sustainable way.

Bearing in mind this was a substantial loan amount for Mr B to borrow, given his particular financial situation, and he was arranging to repay it over a four year term, I think Buddy Loans should have carried out further checks before agreeing to provide the loan to ensure that it had a proper understanding of Mr B's financial situation.

So, I've looked at what I think proportionate checks would likely have shown.

Mr B has provided his bank statements so I've looked through these to see what Buddy Loans was likely to have found out had it done more in-depth checks. To be clear, I'm not suggesting the lender should have necessarily asked to see Mr B's bank statements. Buddy Loans could decide for itself what it needed to do to meet its obligation as a lender to carry out checks that were reasonable and proportionate. But in the absence of other evidence, I think the bank statements Mr B has sent me give a reasonable insight into his finances at the time and show me what a proportionate check is likely to have revealed.

Had Buddy Loans done proportionate checking it would likely have seen that Mr B's income was less than it thought. In the period May-August 2017 his maximum earnings were only £1850 – and in June 2017, when he started this loan, his take home pay was just £1,661.37. This meant that in reality, Mr B wasn't in a position to be able to meet his normal monthly outgoings of around £458 and pay all his credit commitments – which Buddy Loans credit checks showed totalled £1267 (including this loan). By my reckoning he was facing a shortfall of around £64.

I think also that had Buddy Loans done proportionate checking it would have seen enough to confirm the indications on his credit file that he was facing serious problems managing his money. I think Buddy Loans should've realised that Mr B had become reliant on expensive forms of borrowing and he was dependent on obtaining new credit in order to fund his day to day costs and meet his other credit commitments. And I think it would have learnt that Mr B was regularly spending significant amounts on what appear to be online gambling transactions.

So if Buddy Loans had sought a fuller picture of Mr B's financial situation, as I think it should've done, it wasn't likely to have been reassured that the loan would be sustainable for him. I think Buddy Loans should've seen enough, had it done a proportionate check, to have concluded that the loan *wasn't* likely to be sustainably affordable for Mr B and so it *shouldn't* have provided it.

In coming to my view I've taken into account that Mr B had told Buddy Loans that he intended to use this loan for 'debt consolidation' – in other words, to pay other debt.

But the loan was paid into Mr B's bank account, so Buddy Loans didn't have control over whether it would in fact be used to pay off other credit.

Mr B's recent borrowing track record suggested he was repeatedly borrowing. The fact Mr B had taken out several recent loans (which Buddy Loans could see from the credit checks it did) was a sign that he was facing financial difficulties.

Thinking about all of this information, I don't think Buddy Loans could reasonably have satisfied itself that providing this loan to Mr B wouldn't put him in a worse position by increasing his overall debts. Given his recent borrowing, there was a real risk that Mr B might use this loan to help him meet his immediate need to make loan repayments with the result this loan would simply add to his existing debt.

And even if Mr B had used this loan to repay some existing debt, I don't think Buddy Loans was able safely to say this would've improved his overall position sufficiently to achieve a significant and sustainable improvement in his financial situation – also keeping in mind that his borrowing appears to have been financing his gambling spending, which I think a proportionate check would've likely shown. I think that's borne out by information I've seen showing that Mr B still had two accounts showing in default on his credit file some years later.

So for these reasons, I'm upholding Mr B's complaint about the loan.

I haven't seen enough to make me think that Buddy Loans acted towards Mr B in any other way that wasn't fair and reasonable. So I'm not awarding any additional redress."

What the parties said in response to my provisional decision

Both Mr B and Buddy Loans have agreed with what I've said in my provisional decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've set out our approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding this complaint.

Having done so, and as no further comments have been received in response to my provisional decision that change what I think about this case, I still think it's fair to uphold this complaint for the reasons I explained in my provisional decision.

Putting things right

I think it is fair and reasonable for Mr B to repay the principal amount that he borrowed, because he had the benefit of that lending. But he has had to pay interest (and possibly other fees or charges) on a loan that shouldn't have been provided to him.

I understand the loan has been repaid so Buddy Loans should do the following:

- A) refund everything Mr B paid over the principal loan amount and repay this to Mr B with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled
- B) remove any adverse information recorded on Mr B's credit file in relation to the loan.

*HM Revenue & Customs requires Buddy Loans to deduct tax from this interest. Buddy Loans should give Mr B a certificate showing how much tax has been deducted if he asks for one.

My final decision

I uphold this complaint and direct Advancis Limited trading as Buddy Loans to take the steps set out above to put things right for Mr B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 July 2021.

Susan Webb
Ombudsman